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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1969
No. 279

JAMES R. HAGAN, ROBERT K. LANCEFIELD, PAUL A. REYFF, and W. ROBIN WHITE, each individually for himself and also a representative of all other persons similarly situated,

Appellants

v.

RONALD REAGAN, Governor of California, and FRANK JORDAN, Secretary of State of California,

Appellees

On Appeal from
The United States District Court
for the Northern District of California

JURISDICTIONAL STATEMENT

JAMES R. HAGAN
ROBERT K. LANCEFIELD
PAUL A. REYFF
W. ROBIN WHITE
c/o 1585 Madrono Ave.
Palo Alto, California
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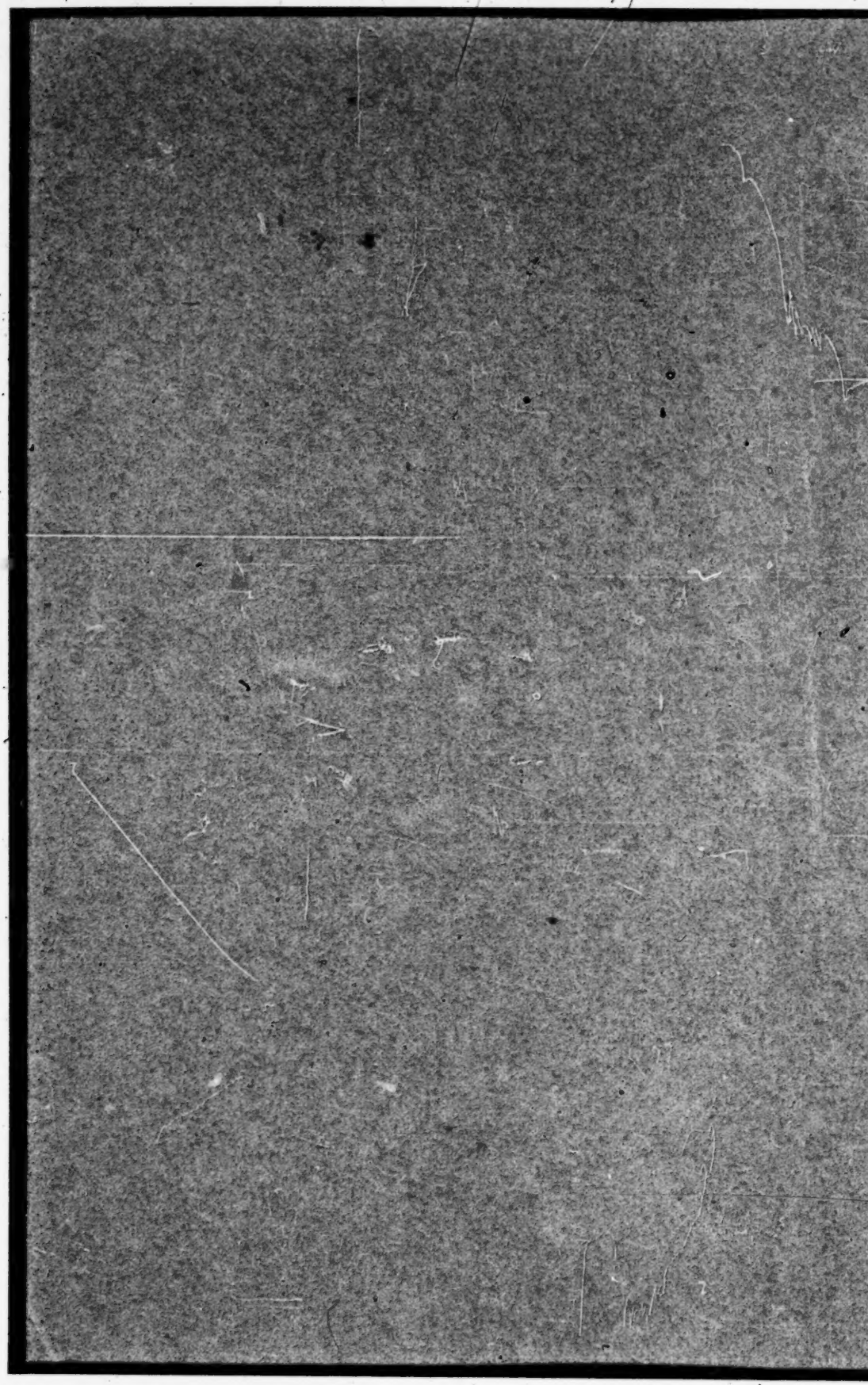

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OFFICIAL AND UNOFFICIAL REPORTS

The decision in this case has not yet been published in any official or unofficial reporter. A copy of the decision is attached hereto as Appendix A.

STATEMENT OF JURISDICTION

A.

This proceeding seeks a declaration that the general ticket system established by California statutes for the appointment of presidential electors is unconstitutional. It asks that State officials responsible for the implementation of that system (the Governor and Secretary of State) be permanently enjoined from holding any future presidential elections under that system. This proceeding was brought under the following United States constitutional provisions, statutes, and rules:

(a) The Fourteenth Amendment to the Constitution.

(b) 28 U.S.C.- 1343(3) and (4) which confer jurisdiction upon the district courts to redress the deprivation, under color of State law, of constitutional and civil rights, including the right to vote.

(c) 28 U.S.C. 2201 and 2202 which establish the remedy of declaratory relief.

(d) Federal Rule of Civil Procedure 23 which permits class actions.

(e) 42 U.S.C. 1983 and 1988 which provide for equitable remedies under the Constitution and laws of the United States

(f) 28 U.S.C. 2281 and 2284 which provide that a permanent injunction restraining the operation of execution of any State statute must

be granted by a three judge district court, and providing for such court.

B.

The date of the judgement appealed from is April 18, 1969. Said judgement was entered on the same date. No rehearing was sought. Notice of appeal was filed on April 25, 1969, in the United States District Court for the Northern District of California.

C.

Jurisdiction of this appeal is conferred upon this Court by 28 U.S.C. 1253. A case sustaining such jurisdiction is Williams v. Virginia State Board of Elections, summarily affirmed by this Court this term on January 13, 1969, in Docket No. 733. (See 393 U.S. 320).

D.

This suit challenges the constitutional validity of California statutes which establish the general ticket system for the appointment of presidential electors. The particular State statutes involved are Sections 8003, 8604, 9103, 10204, 10205, 10229, 18753, 18755, 18758, 25102, 25104, 25106, and 25107 of the California Elections Code. Copies of those statutes are attached hereto as Appendix B.

QUESTION PRESENTED

This appeal presents a single question:

> Is the general ticket system for the appointment of presidential electors constitutionally permissible?

STATEMENT OF THE CASE

A.

California statutes establish the general ticket system for the appointment of presidential electors. See Sections 8003, 8604, 9103, 10204, 10205, 10229, 18753, 18755, 18758, 25102, 25104, 25105, 25106, and 25107 of the California Elections Code, copies of which are attached hereto in Appendix B.

Under the general ticket system, whole slates of electors are nominated by the state conventions of the various political parties. Sections 8604 and 9103 of the California Elections Code. However, the names of the electors do not appear on the ballot. In lieu thereof, the names of the candidates for President and Vice President of each party are printed on the ballot under the title, "Presidential Electors." Section 10204 of the California Elections Code. See the sample ballot for the 1968 presidential election which is attached hereto as Appendix C. Voters are instructed as follows: "To vote for all of the electors of a party, stamp a cross (+) in the square opposite the names of the presidential and vice presidential candidates of that party." Section 10229 of the California Elections Code. The slate of electors which receives the "highest number of votes" wins the election. Section 18758 of the California Elections Code. The electors, when convened to cast their votes, must vote for the person for President and the person for Vice President who are the candidates of the political party which they represent. Section 25105 of the California

Elections Code.[1]

The net effect of the general ticket system is that one party's candidates for President and Vice President receive all the electoral votes from California. All those electoral votes are awarded on the basis of the highest number of votes cast for a particular party's candidates, that is, a plurality of votes which, in any election between more than two sets of candidates, may not constitute a majority. In other words, a plurality of popular votes controls all the electoral votes from California. The votes of all California voters who did not vote with the plurality are not reflected in the electoral vote and have no effective voting power in the election of the President and Vice President. Those votes are counted only to be discarded. For the

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1/ There is some doubt about the constitutional validity of this statute. However, any dispute on this point is somewhat academic. As a practical matter, state conventions select as electors persons who wholeheartedly support the party and the candidates of the party and who would vote for the candidates of the party in any case. On some few occasions, an elector from some other State has refused to vote for the candidates of his party. However, there is no record of any elector from California ever having defected from his party's candidates. California electors have an unblemished record of voting for the candidates of the party which they represent. See Appendix D. See also Feerick, "The Electoral College--Why It Ought To Be Abolished," 37 Fordham L. Rev. 1 (1968).

reasons hereinafter set forth, this does not comply with the Fourteenth Amendment guarantees of due process of law and equal protection of the laws.

B.

The complaint in this matter was filed in the United States District Court for the Northern District of California on May 6, 1968. It originally asserted two causes of action: (i) a cause of action challenging the constitutional validity of the general ticket system, and (ii) a cause of action asserting that presidential electors are malapportioned among the fifty States and the District of Columbia. The complaint named three defendants: the United States of America, Ronald Reagan as Governor of California, and Frank Jordan as Secretary of State of California. The complaint sought two principal forms of relief. It sought an injunction prohibiting the Governor and Secretary of State of California from further implementation of the general ticket system, and it sought an injunction requiring weighted voting by presidential electors.

Subsequent to the filing of this lawsuit, the United States moved to be dismissed as a party defendant. Appellants agreed that the United States was entitled to be dismissed as a defendant and it was stipulated that the United States be dismissed from this litigation.[2]

2/ For this reason, the case has been retitled in this appeal to omit the United States as a party defendant.

The dismissal of the United States from this litigation had important effects upon this case. Only the Governor and the Secretary of State of California were left as parties defendant, and these State officers have no power to alter the apportionment of presidential electors or the weight of votes by presidential electors. Consequently, the cause of action concerning the malapportionment of electors and the request for an injunction to require weighted voting by electors were eliminated from this case.

Accordingly, only one issue remains in this case, the issue of whether or not the general ticket system established by California statutes for the appointment of presidential electors is constitutionally permissible. Only one form of relief is sought, a permanent injunction to prevent the Governor and Secretary of State of California from implementing the general ticket system in future presidential elections.

It may perhaps be important to state this point in the negative as well as in the positive, and, to set out issues which are not involved in this litigation.

(1) Appellants do not here challenge the constitutional validity of the electoral system for the election of the President and Vice President, That system is established by Section 1 of Article II of the Constitution and can hardly be unconstitutional. See Gray v. Sanders, 372 U.S. 368, 380 (1963), where this Court (Justice Douglas speaking for the majority) observed that the collegiate principle for the election of the President had been validated by its inclusion within the Constitution. (Note, however, Justice

Douglas' comment in footnote 9 at 372 U.S. 380 that the theory of political equality upon which the electoral college was based belongs to a "bygone era.").

(2) Appellants do not ask this court to impose upon the State of California any particular form or manner for the appointment of presidential electors. The Constitution leaves to the discretion of the legislature of California the selection of the method by which electors will be appointed. Appellants assert only that the present method, the general ticket system, is unconstitutional. Appellants ask only that that system be enjoined. After that, the California legislature may enact any new method for the selection of presidential electors that it deems appropriate, so long as that new method complies with applicable constitutional standards under the Fourteenth Amendment.

(3) This case concerns no political questions. Appellants are not concerned with the political desirability or undesirability of the general ticket system or of any other system or systems which might be substituted for it on a national scale or on a State by State basis. Appellants are asserting only a narrow legal challenge on constitutional grounds to the general ticket system. The expediency or inexpediency of that system or any other system is irrelevant to the legal questions posed.[3] Whether other

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3/ Appellants realize that this case does not arise in a vacuum. For perspective and the historical background of the electoral system and the general ticket system, the

systems may be better or worse is also irrelevant to the legal questions posed. For this reason, Appellants will not discuss in this brief any political issues or the relative merits of various systems by means of which presidential electors might be appointed.

C.

On January 13, 1969, in Docket No. 733, this Court summarily affirmed the case of Williams v. Virginia State Board of Elections, 288 F. Supp. 622 (E.D. Va. 1968). See 393 U.S. 320. The district court in this case concluded that the Williams case determined the only question presented here, that is, the question of the constitutional validity of the general ticket system. Accordingly, the district court dismissed the complaint herein without hearing this case on its own merits. This appeal is taken from that dismissal.

(cont'd) definitive work is Peirce, THE PEOPLE S PRESIDENT (1968). See also Feerick, "The Electoral College--Why It Should Be Abolished," 37 Fordham Law Review 1 (1968), and "Electing The President, A Report of the Commission on Electoral College Reform," American Bar Association (1967).

REASONS WHY THE QUESTION PRESENTED MERITS PLENARY CONSIDERATION

This case questions the constitutional validity of the general ticket system by means of which California (and all the States and the District of Columbia) appoint presidential electors. This question is of great importance to American voters everywhere. It has never received plenary consideration or full litigation in any court. For the following reasons, this question should receive plenary consideration in this Court with briefs on the merits and oral argument.

I.

THE QUESTION PRESENTED INVOLVES VOTING RIGHTS

A.

Voting Rights Are Fundamental Rights

Voting rights are legal rights of the highest order because they are preservative of all other rights. This recognition of the importance of voting rights was first expressed in Yick Wo. v. Hopkins, 118 U.S. 356, 370 (1886). It has been reiterated by the Supreme Court in many recent voting rights cases. In Reynolds v. Sims, 377 U.S. 533 (1964), the Court said:

> ... the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of a representative government. (377 U.S. at 555.)

In Wesberry v. Sanders, 376 U.S.I (1964), the Court stated:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which. . . we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. (376 U.S. at 17.)

In Carrington v. Rash, 380 U.S. 89 (1965), referring to voting rights, the Court said:

> We deal here with matters close to the core of our constitutional system. (380 U.S. at 96.)

Accordingly, it is now firmly established that voting rights are important and fundamental rights included within the concept of liberty protected by the due process clause of the Fourteenth Amendment and subject to equal protection of the laws guaranteed by that amendment. United States v. Texas, 252 F. Supp. 324, 250 (W. D. Tex. 1966), affirmed 384 U.S. 155 (1966).

B.

State Laws Regulating Presidential Elections Are Subject to the Fourteenth Amendment

State laws regulating presidential elections which affect voting rights constitute "state action" subject to the Fourteenth Amendment. Accordingly, such State laws are unconstitutional if inconsistent with due process of law or equal protection of the laws. Williams v. Rhodes, 393 U.S. 23 (1968).

C.

Laws Which Might Invade or Restrain Voting Rights Must Be Closely Scrutinized and Carefully Confined

Section 1 of Article II of the Constitution provides that:

> Each State shall appoint, in such manner as the legislature thereof

may direct, ... electors ....

Under this provision, the legislature of each State has broad discretion in choosing the method of appointment of presidential electors. However, that discretion is not unlimited. The method chosen by the legislature must comply with the guarantees to due process of law and equal protection of the laws contained within the Fourteenth Amendment. Williams v. Rhodes, supra, at 393 U.S. 23, 28-31 (1968). See also Williams v. Virginia State Board of Elections at page 826 of the opinion where the court ruled:

> ... the manner of appointment (of presidential electors) must itself be free of Constitutional infirmity.

In reviewing State statutes to determine whether they comply with the requisites of the Fourteenth Amendment, when fundamental rights such as voting rights are at stake, such statutes must be closely scrutinized and carefully confined. Harper v. Virginia State Board of Elections, 383 U.S. 663, 670 (1966). This principle and the Fourteenth Amendment apply to any preliminary election which in fact determines the true weight a vote will have, such as the election of presidential electors. Gray v. Sanders, 372 U.S. 368, 380 (1963).

Since Appellants assert that the laws of the State of California which establish the general ticket system impair their right to vote, the following principles announced in Reynolds v. Sims, supra, should prevail in this case:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. (377 U.S. at 561-562.)

II.

THE QUESTION PRESENTED IS OF GREAT IMPORTANCE

Whether or not the general ticket system is permissable is a constitutional question of great practical importance in our country at this particular time. The question affects voters everywhere. Not only the State of California appoints presidential electors by means of the general ticket system, each other State and the District of Columbia also appoint electors by that system. Accordingly, although only the voting rights of California voters under California laws are directly in issue in this case, the outcome of this case will affect the voting rights in presidential elections of voters throughout the nation, the voting rights of voters in every State and in the District of Columbia.[4] Because of the critical nature of voting rights in general and of voting rights in particular in presidential elections, and because of the constitutional dimensions of the question presented, this case is so significant to so many Americans on a question of such constitutional importance that

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4/ Note that this case does not ask this Court to decide whether other systems for the appointment of presidential electors may be more or less desirable than the general ticket system. Nor does this case ask this Court to impose any particular system on the States. This case, unlike any other case previously

it is deserving of a full hearing with briefs and oral argument before this Court.

4/ (Cont'd) litigated, focuses only on the effect of the general ticket system upon the individual voter's effective voting power in a presidential election, and asks only one non-political, legal question: Does the general ticket system meet the requirements of the Fourteenth Amendment guarantees of due process of law and equal protection of the law?

III

THE QUESTION PRESENTED HAS NEVER BEEN FULLY LITIGATED

The constitutional validity of the general ticket system has never been fully litigated. This is not to say that that question has never been involved in any case. It has been involved in three previous cases: Delaware v. New York, 385 U.S. 895 (1966), rehearing denied 385 U.S. 964 (1966), Penton v. Humphrey, 264 F. Supp. 250 (S.D.Miss. 1967), and Williams v. Virginia State Board of Elections, supra. However, as pointed out in the following discussion, the constitutional validity of the general ticket system was never fully litigated in any of those cases:

A.

Delaware v. New York

In 1966, the State of Delaware sought leave before this Court to bring suit against all the other States to challenge the entire electoral system on constitutional grounds. The Court denied Delaware's petition without opinion. Delaware v. New York, supra. It was suggested in Penton v. Humphrey, supra, that the Supreme Court's action in the Delaware case forecloses any suit challenging the constitutional validity of the general ticket system. However, for the following reasons, the Delaware case has no application to this case.

The State of Delaware sought to bring suit against all the other States in its capacity as parens patriae for its citizens and in its own behalf. It sought to challenge the general ticket system and the national electoral system.

On the challenge to the general ticket system, Delaware had no standing in its own capacity or as parens patriae to bring the suit. As a State, Delaware had no right under the Constitution to intervene in the method chosen by other States for the appointment of presidential electors by those other States. Section 1 of Article II of the Constitution permits each State to choose its own method for the appointment of electors. In addition, Delaware citizens had no standing to complain about the laws of other States, for the laws of other States did not affect their voting rights in Delaware. Accordingly, as parens patriae, Delaware had no standing to complain about the laws of other States. Moreover, if Delaware had concluded that the general ticket system was improper or unconstitutional, Delaware was fully empowered to change its own law. It would make no sense to permit Delaware to sue other States in litigation over a Delaware law which Delaware could change at will.

With regard to Delaware's challenge to the national electoral system, Delaware's suit was doomed to failure at its inception. As observed herein and in Gray v. Sanders, supra, since the collegiate system is established by the Constitution, it cannot be unconstitutional.

This case is quite different from the

Delaware case. Plaintiffs are citizens and individual voters in California who claim that their individual right to vote is impaired by the California statutes which establish the general ticket system. The laws of no State other than California are directly involved in this litigation, and the national electoral system is not here challenged.

Since this Court did not express the reasons for its decision in the Delaware case, it is impossible to know just what this Court did decide in that litigation. However, it seems safe to say that the Delaware case did not foreclose a proper challenge to the general ticket system by citizens and voters of a State complaining that that State's adoption of the general ticket system interferes with their constitutionally guaranteed voting rights.

B.

Penton v. Humphrey

Penton v. Humphrey, supra, presented a challenge to the general ticket system in Mississippi. It was dismissed for a number of reasons. Vice President Humphrey had not been served within the State of Mississippi. Presidential electors for 1968 had not at the time of the suit (1967) been selected, and so could not be joined in the suit although they were intended to be defendants therein. Finally, the district court found that the complaint did not state a claim upon which relief could be granted, citing Gray v. Sanders, supra, and the Delaware case. For the following reasons, the court's reliance

upon both cases was misplaced.

The statements in Gray v. Sanders recognizing the constitutional validation of the electoral system do not refer to the general ticket system. Those remarks refer only to the electoral college, and that has no relation to the general ticket system. The general ticket system is created by State law, not Section 1 of Article II of the Constitution. In this case, Appellants' challenge is directed only to the California laws which establish the general ticket system and which operate to impair Appellants' effective voting rights. Appellants do not challenge the national electoral system. Accordingly, the remarks from Gray v. Sanders relied upon by the court in Penton v. Humphrey have no application to this case and, in fact, may have had no application to that case.

The court in Penton placed heaviest reliance for its decision on the Delaware case. The court reasoned that this Court must have reached the constitutional questions concerning the general ticket system in the Delaware case and must have upheld that system. The fallacy of the court's reasoning has been illustrated in the preceding discussion of the Delaware case.

Since the court in Penton v. Humphrey misconstrued the two cases upon which it relied, and since it made no independent analysis of the general ticket system, that decision is of little or no value to a proper analysis of this case.

C.

Williams v. Virginia State Board of Elections

Appellants recognize that, inherent in Williams v. Virginia State Board of Elections, was the issue of the constitutional validity of the general ticket system. However, Appellants point out that that issue was not fully litigated in that case and that it did not receive plenary consideration in that case. The Plaintiffs in Williams were intent upon obtaining a declaration that the district election system for the appointment of presidential electors is constitutionally required. An inquiry into the constitutional validity of the general ticket system was merely incidental to that effort. Accordingly, the constitutional validity of the general ticket system received only cursory examination in Williams.

The district court in Williams described the three contentions of the plaintiffs as follows:

First, the plaintiffs there contended that the intendment of the Constitution and its framers was that presidential electors be appointed by means of a district election system. Plaintiffs here before this court make no similar assertion. The district court in Williams correctly held that the Constitution leaves to the discretion of the State legislatures the method by which presidential electors will be appointed.

Second, the Plaintiffs in Williams asserted that there was disparity in voting power in the presidential election between the citizens of various states. Appellants in this case make no similar assertion. We

have taken great pains to point out that this case does not concern the voting power of Californians as compared to the voting power of citizens of other States. This case concerns only the voting power of one group of California voters as compared to the voting power of other California voters. Appellants here believe that the district court in Williams was correct in finding that any disparity in voting power between citizens of different States is traceable to the national electoral scheme established by the Constitution and that, therefore, any such disparity is beyond challenge.

Third, Plaintiffs in Williams asserted that the general ticket system violated the "one man-one vote" principle of the equal protection clause of the Fourteenth Amendment. However, as observed earlier, because they were preoccupied with the first issue, the Plaintiffs in Williams did not fully litigate or satisfactorily examine the impact of the general ticket system on the individual voter's effective voting power. As a result, the court in Williams held that the general ticket system was not unconstitutional and this Court affirmed. This is a holding directly against Appellants in this case. However, that holding is wrong because it is based on an incorrect assumption.

The district court in Williams characterized the general ticket system as merely a familiar application of the unit rule not unlike the unit rule applied in the election of United States Representatives. The unstated assumption essential to the court's reasoning is that, in the presidential election, the voter votes only for presidential electors. That is not true. For two

interrelated reasons, this assumption is incorrect. First, as more fully established later in this brief, voters do not vote for electors, they vote for the presidential candidates of their choice. Second, the election of the President is an integrated two-step process in which there is first a popular vote that is then translated into an electoral vote which indirectly reflects the vote of the people. This is far different from the simple one-step election process by which Representatives, Senators, legislators, governors, mayors, and various other officials are elected. In any simple one-step election procedure, the majority or plurality may rule, and the unit rule does no harm. However, in the unique two-step election process by which the President and Vice President are elected, the unit rule cancels out millions of California votes at an intermediate stage before those votes have any opportunity to be counted in the election of the President. This is the point which the Plaintiff in Williams failed to develop, and this is the point which the district court in Williams failed to perceive. This is the point which differentiates the election of the President from other elections. This is the reason why the general ticket system discriminates between voters, according some undue weight to their votes while cancelling out the votes of others. If voters voted directly for the President, then the most votes cast in the election could properly elect that official just as the most votes cast may elect other public officers in a simple one-step election procedure which is final when the votes are counted. However, in the indirect, two-step election procedure for

the election of the President and Vice President, which is not final until the second step wherein the national electoral vote is tabulated, it is not consistent with equality in voting power to reflect only the plurality of California popular votes in the electoral vote, and to discard all other popular votes cast in California.

IV.

DECISIONS OF THIS COURT INDICATE THAT THE GENERAL TICKET SYSTEM IS PROBABLY UNCONSTITUTIONAL

A.

Voters Vote For Presidential Candidates, Not For Presidential Electors

Technically speaking, when a voter casts his ballot in a presidential election, he is voting for presidential electors. However, all persons familiar with presidential elections recognize that voters vote for the presidential candidate of their choice, not for electors. Even the legislature of California recognizes this practical reality and encourages and facilitates it by use of the short form ballot upon which appear only the names of the candidates, not the names of the electors. Voters generally do not know or care who or what electors are. Electors do not campaign. Candidates do. Electors do not make speeches and public appearances. Candidates do. When the voter

marks his ballot, he expresses his preference for President and Vice President of the United States, and he intends his vote to have some effect in selecting those officials.

This obvious fact has been recognized from the times of our first elections under the Constitution. The Supreme Court remarked in McPherson v. Blacker, 146 U.S.1 (1892):

> Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the Chief Executive, but experience soon demonstrated that, whether chosen by the legislature or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. (146 U.S. 36.)

The same observation was made in a Senate Select Committee report in 1826:

> In the first election held under the Constitution, the people looked beyond these agents, fixed upon their candidates for President and Vice President, and took pledges from the electoral candidates to obey their will. In every subsequent election the same thing has been done. Electors, therefore, have not answered the design of their constitution: They are not the independent body and superior characters which they were intended to be. They are not left to

> the exercise of their own judgment, on the contrary, they give their vote, or bind themselves to give it, according to the will of their constituents. They have degenerated into mere agents, in a case which requires no agency, and where the agent must be useless, if he is faithful, and dangerous if he is not. (S. Report No. 22, 20th Congress, 1st Sess. 4 (1826).)

See also Ray v. Blair, 343 U.S. 214 at 228 (1951); Peirce, THE PEOPLE'S PRESIDENT, (1968), at 121-126; and "Electing The President, A Report of the Commission on Electoral Reform," American Bar Association (1967), at 23-26.

This practical reality is the consideration upon which this case turns, and properly so. Courts are concerned not with the theoretical application of the law, but with what actually happens in the real word. The practical application of the law is what determines its constitutional validity or invalidity. See, for example, Reitman v. Mulkey, 387 U.S. 369 (1967). At issue in that case was Section 26 of Article I of the California Constitution which had been enacted by the people of California as an initiative measure known as Proposition 14. That proposition provided that neither the State nor any subdivision thereof could deny, either directly or indirectly, the right of a person, in his absolute discretion, to refuse to sell, lease, or rent his property to any other person. Although that provision appears on its face to be consistent with ordinary freedoms, the California Supreme Court found that, as

a practical matter and in the light of past history, Proposition 14 (Section 26) involved the State affirmatively in racial discrimination in the sale and rental of real property. On that basis, the California Supreme Court invalidated that provision. This Court approved and accepted the California court's findings and affirmed the decision.

Yick Wo v. Hopkins, supra, is another example of this principle. In that case, a law regulating the operation of laundries, unobjectionable on its face, was declared unconstitutional because it was applied only to Chinese laundrymen.

More recently, the case of Williams v. Rhodes, supra, was decided on the premise that, as a practical matter, Ohio laws regulating the qualifications of political parties for the presidential ballot made it impossible for any party except the Democratic and Republican parties to achieve a place on the ballot for the presidential election in Ohio.

The two most explicit and most important cases decided on this principle are Brown v. Board of Education, 347 U.S. 438 (1954), and Griffith v. Illinois, 351 U.S. 12, 20 (1956). In Brown v. Board, State laws which created separate but supposedly equal public educational facilities for Negro and white students were invalidated on the recognition that separate facilities were inherently unequal. In Griffith, a State law which had been interpreted so as to deny to indigent criminal appellants a free transcript of proceedings in the trial court was invalidated on the premise that, as a practical matter, denial of a free transcript denied effective appellate review to poor people because of

their poverty. Griffith has been followed in Long v. District Court, 385 U.S. 192 (1966) and in Gardner v. California, 393 U.S. 367 (1969). In Gardner, denial of a free transcript to a habeas corpus petitioner was held unconstitutional as "the same invidious discrimination which we (the Supreme Court) held impermissible in the Griffith and Long cases where a State granted appeals in criminal cases, but in practical effect denied effective appellate review to indigents." (394 U.S. at 370-371.) (Emphasis added.)

Since the law is concerned with practical realities, and since, as a matter of practical reality, voters in a presidential election vote for the candidates of their choice, not for faceless and nameless electors, we must examine the practical effect of the general ticket system upon the effective voting power of California voters in the election of the President and Vice President.

B.

The General Ticket System Is Unconstitutional Under The Fourteenth Amendment

The Fourteenth Amendment provides in pertinent part that:

> No State shall...deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Due process of law requires of State statutes three requisites. A statute must have a proper legislative purpose, it must accomplish that purpose by means reasonably related thereto, and it must not result in effects which are unreasonable or arbitrary. Burstyn v. Wilson, 343 U.S. 495 (1952), Perez v. Brownell, 356 U.S. 44 (1958), and Aptheker v. Secretary of State, 378 U.S. 500 (1964).

Equal protection requires that classifications made by statutes refrain from making unreasonable or invidious discriminations. Classifications must be made for a proper legislative purpose, they must be reasonably related to that purpose, and they must not result in an arbitrary deprivation of fundamental rights. Bolling v. Sharpe, 347 U.S. 497 (1954), Morey v. Doud, 354 U.S. 457 (1957), and Brown v. Board of Education, supra.

The general ticket system is unconstitutional under both a due process analysis and an equal protection analysis.

Due Process Analysis

Appellants are willing to grant that the California laws which establish the general ticket system were enacted for a proper legislative purpose, that is, to permit the electorate to express its preferences in the presidential election. However, the general ticket system is not reasonably related to that purpose[5] and it results in unreasonable and arbitrary effects.

5/ There is some question about the purpose of the general ticket system. In 1824,

(i) No Reasonable Relation to Purpose

The general ticket system permits a plurality of California voters to control the entire electoral vote from the State of California. Those voters who are fortunate enough to vote with the plurality have their votes reflected and magnified in the electoral vote. In contrast, voters who did not vote with the plurality have no effect upon the election of the President and Vice President. Their votes are counted and then discarded, and they have no effective voting power toward the election of the President. Their votes are cancelled out by the general ticket system at an intermediate stage. Given the purpose of the general ticket

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5/ (Cont'd) Senator Thomas Hart Benton observed:

> The general ticket system ... was the offspring of policy, and not for any disposition to give fair play to the will of the people. It was adopted by the leading men of certain States to enable them to consolidate the vote of the State. It would be easy to prove this by referring to facts of historical notoriety. It contributes to give power and consequence to the leaders who manage the elections, but it is a departure from the intention of the Constitution, violates the rights of minorities, and is attended with many other evils. (41 Annals of Congress 179, 18th Congress, 1st Session (1824).)

See also 2 Stanwood, A HISTORY OF THE PRESIDENCY 15 (1898).

system, to permit the electorate to express its preference in presidential elections, it is not reasonably related to that purpose to reflect only some votes in the electoral system and discard the rest. The most votes cast should have the most voting power, but there is no sound reason why millions of votes should be cancelled out and never reflected in California's electoral vote. Moreover, in some cases, the plurality does not constitute a majority. (For example, the elections of 1948 and 1968.)[6] In such an election, it is unreasonable to give all the voting strength of California voters to a candidate to whom most of the voters were opposed, and there is no reasonable relation between the purpose of the general ticket system and the practical application of the general ticket system.

(ii) Arbitrary Effects

The effects of the general ticket system are unreasonable in that that system disfranchises millions of California voters as a practical matter. Since voters who do not vote with the plurality do not have their votes reflected in the electoral vote from California, their votes are lost. It is the same as if their ballots were destroyed--their votes are counted, and then simply discarded. It is unreasonable to construct

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6/ See official election returns submitted herewith as Appendix E. Those returns show that, in the 1968 election, President Nixon received 3,467,664 votes in California. All other candidates received a total of 3,783,923 votes (51%) which were cancelled out by the general ticket system.

a system in which some Californians have effective votes in the election of the President whereas the votes of other California voters are effectively nullified. The arbitrariness of this effect is dramatically demonstrated in any election in which the plurality of votes is not a majority. In such a case, the majority of California voters are nullified by the practical application of the general ticket system, and a minority of California voters controls the entire electoral vote of the State. Finally, since the electors from California represent all the voting power from California and all the voters in California, the vote of a voter who did not vote with the plurality is effectively transferred from the candidate of his choice to the choice of the plurality. Thomas Hart Benton explained this point in 1824:

> To lose their votes, is the fate of all minorities and it is their duty to submit; but this is not a case of votes lost, but of votes taken away, added to those of the majority, and given to a person to whom the minority is opposed. (41 Annals of Congress 170, 18th Congress, 1st Session (1824).)

It would be difficult to create by design a more unreasonable voting system than this.

Equal Protection Analysis

Any substantial discrimination in the effective voting power of a class of voters violates the equal protection clause of the Fourteenth Amendment. See Gray v. Sanders,

supra, where it was said:

> The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualification. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.... (O)nce the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be avoided. (372 U.S. at 379-380, 381.)

On this premise, Wesberry v. Sanders held that equality of voting power was a constitutional requirement in the election of United States Representatives, Reynolds v. Sims held that equality of voting power was a constitutional requirement in the election of State legislatures, and Avery v. Midland County, Texas, 390 U.S. 474 (1968), held that equality of voting power was a constitutional requirement in the election of local government officials. Surely, that same principle of equality in voting power must apply as well to the election of the President of the United States.

The general ticket system inherently prevents equality in effective voting power in the election of the President. It classifies voters on the basis of whether or not they voted with the plurality of all voters. The votes of the plurality control the entire California electoral vote, and the votes of

all other voters are discarded. The plurality of voters has effective voting power in the election of the President, all other California voters have no power in the election of the President. In the 1968 presidential election, 7,363,711 votes were cast in California. Of that number, 3,467,664 were cast for President Nixon. Since Mr. Nixon received the most votes cast, he received all the electoral votes from California. All other votes were effectively cancelled out, even though they amounted to 3,783,923 votes (or 51% of the total vote.) The voters who cast those votes did not have equality in voting power in the election of the President with the plurality of voters. The plurality had 40 electoral votes, all other voters had none. 7/

7/ This disparity in voting power between California voters occurs in every presidential election. In 1964, President Johnson received 4,171,877 votes which were reflected in the electoral vote. Senator Goldwater and other candidates received a total of 2,885,709 votes which were discarded. In the 1960 election, then Vice President Nixon received 3,259,772 votes and won all the electoral votes from California while 3,224,099 votes for President Kennedy were cancelled out. In 1956, President Eisenhower received 3,027,668 votes which controlled the California electoral vote while 2,420,135 votes for Governor Stevenson were counted and discarded. In 1952, President Eisenhower won 2,897,310 votes and all the electoral votes. Governor Stevenson won 2,197,548 votes which were nullified. In 1948, President Truman received all the electoral

This does not comply with the constitutional requirement for equality in voting power. The Supreme Court has consistently held that all qualified voters have a constitutionally protected right to cast their ballots and have them counted at their full weight. Gray v. Sanders, 372 U.S. at 380, and cases cited therein. It does not comply with that mandate when the votes of the plurality of California voters have effective voting power in the election of the President while the votes of all other California voters, (which may constitute a majority) have no effective power in that election.

C.

Note 12 In Gray v. Sanders Invalidated The General Ticket System

No consideration of this case can be complete without a thorough examination of Gray v. Sanders, 372 U.S. 368 (1963). As pointed out in the preceding section, the election of the President is accomplished by means of a unique two-step election process. Gray v. Sanders is the only case which has considered a similar two-step election process.

7/ (Cont'd) votes from California even though a majority of California voters voted against him. He received a plurality of 1,913,134 votes (48%) and all the electoral votes from California while 52% of the popular vote in California was nullified by the general ticket system. This same disparity occurs within every State, and cancels literally millions of votes nationally.

In Gray v. Sanders, the election process at issue was the Georgia county unit system. The Georgia county unit system was virtually identical to the national electoral system and the general ticket system with two exceptions: (i) the units involved were counties in Georgia, not States of the United States, and (ii) although there were county unit votes, there were no electors. In other words, it was the electoral system on a smaller scale and without human electors.

The Georgia county unit system applied to the Democratic primary election. Candidates for nominations who received the highest number of votes in any given county were considered to have carried that county and were entitled to receive all the unit votes of that county. Each county had two "county unit" votes for each representative to which it was entitled in the lower house of the General Assembly. The majority of all the county unit votes nominated for United States Senator and Governor; a plurality of county unit votes nominated for other statewide offices. This is a direct analogue of the general ticket system in which the candidates for President and Vice President who receive the highest number of votes in California receive all the electoral (or State unit) votes from California, and in which a majority of electoral (State unit) votes elects the President and Vice President.

The Supreme Court held that the Georgia county unit system was unconstitutional because of the disparity in population between counties which resulted in malapportionment and the weighting of votes. The Court ruled that no weighting of votes could be tolerated

under the Constitution. This holding cannot apply to this case. Although there is disparity between the populations of the various State units in the electoral system which results in malapportionment and the weighting of votes, Article II, Section 1, of the Constitution establishes those units and validates the collegiate principle in the election of the President despite its numerical inequality. Thus the national electoral system is beyond challenge. However, footnote 12 in Gray v. Sanders at 372 U.S. 381 indicates that the general ticket system is unconstitutional for another reason. Footnote 12 reads as follows:

> The county unit system, even in its amended form... would allow the candidate winning the popular vote in the county to have the entire vote of that county. Hence the weighting of votes would continue, even if unit votes were allocated strictly in proportion to population. Thus if a candidate won 6,000 of 10,000 votes in a particular county, he would get the entire unit vote, the 4,000 other votes for a different candidate being worth nothing and being counted only for the purpose of being discarded.[8]

8/ Note that Justice Douglas in footnote 12 in Gray v. Sanders assumes that voters vote for candidates, not county voting units, and that the proper test by which to measure an indirect voting procedure is whether or not voters have equal voting

This is exactly what happens in the general ticket system established by the State laws of California. If a candidate wins 6,000,000 of 10,000,000 votes cast in the State of California, he receives the entire electoral vote from California, the other 4,000,000 votes for different candidates being worth nothing and being counted only for the purpose of being discarded. Thus the votes are weighted in violation of the equal protection clause of the Fourteenth Amendment, and the general ticket system is unconstitutional.

8/ (Cont'd) power at the final step of a two-step election process. Applied to this case, the reasoning recognizes that voters vote for presidential candidates, not electors, and it requires that each California voter have equal effective voting power in the final step of the presidential election process.

C O N C L U S I O N

Appellants here are not attempting to change the method by which the President is elected. Appellants seek only to protect their voting rights in the electoral system presently prescribed by the Constitution.[9] However, Appellants are not unaware of the current political debate concerning the manner in which Americans elect the President. We recognize that this case could tangentially affect that debate.[10] Despite that debate,

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9/ Appellants do not even claim that they have a right to vote for presidential electors. We assert only that, in any election which the State holds, each voter is constitutionally entitled to equal voting power.

10/ This case will not determine the outcome of that debate. However, this case could have one important effect upon that debate. If appellants prevail on the merits, some change will be required. Debate will no longer be enough. The politicians will have to act. Either the State legislatures will have to enact some new method for the appointment of presidential electors, or the Congress will have to propose a Constitutional amendment for a complete revision of the electoral system. In other words, this case could act as a catalyst in the process to modernize and reform the electoral system. The vast majority of Americans favor such reform. See Appendix F. However, without some catalyst, it may be doubtful that such reform will take place. See Appendix G.

Appellants are attempting to litigate only a strictly legal question to determine whether the general ticket system established by California law for the appointment of presidential electors denies equal voting rights to the voters of California.

Since this question touches the vital interests of so many Americans, since this question has never before received adequate judicial examination, and since there is some indication in decisions of this Court that the general ticket system is unconstitutional, it is appropriate that this case receive plenary consideration by this Court.

Respectfully,

By : s/James R. Hagan
James R. Hagan

For himself and : s/Robert K. Lancefield
Robert K. Lancefield

s/Paul A. Reyff
Paul A. Reyff

s/W. Robin White
W. Robin White

PRO SE

APPENDIX A

JUDGMENT OF THE COURT BELOW DISMISSING THE COMPLAINT HEREIN

FILED
Apr 18 1969
C. C. EVENSEN, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES R. HAGAN, (et al.), Plaintiffs, vs. THE UNITED STATES OF AMERICA, (et al.), Defendants,	CIVIL ACTION NO. 49204 ORDER

This cause came for hearing on defendants' motion to dismiss the action for failure to state a claim upon which relief can be granted, based on the authority of Williams v. Virginia State Board of Elections, 89 S.Ct. 555 (1969), and the court being fully advised, it is

ORDERED that the defendants' motion be granted and that the action be and it is hereby dismissed without leave to amend.

DATED:

s/ Ben C. Duniway
Ben C. Duniway
United States Circuit Judge

s/ Lloyd H. Burke
Lloyd H. Burke
United States District Judge

s/ Robert F. Peckham
Robert F. Peckham
United States District Judge

APPENDIX B

CALIFORNIA STATUTES WHICH ESTABLISH THE GENERAL TICKET SYSTEM

§ 8003. Elector; notice; candidate on ballot.

Whenever the state convention of a political party submits to the Secretary of State its certified list of nominees for electors of President and Vice President of the United States, he shall notify each candidate for elector of his nomination by the convention. He shall cause the names of the candidates for President and Vice President of the several political parties to be placed upon the ballot for the ensuing general election.

§ 8004. Presidential electors; nomination.

In each year of the general election at which electors of President and Vice President of the United States are to be chosen, the convention shall also nominate as the candidates of its party as many electors of President and Vice President of the United States as the state is then entitled to and shall certify the name of each elector nominated, his residence, and his business address to the Secretary of State.

§ 9103. Presidential elections; nomination.

In each year of the general election at which electors of President and Vice President of the United States are to be chosen, the convention shall also nominate as the candidates of its party as many electors of President and Vice President of the United States as the state is then entitled to and shall certify the name of each elector nominated, his residence, and his business address to the Secretary of State.

§ 10204. Presidential electors. The names of those candidates for the office of presidential elector who have either been nominated by the state conventions of their respective political parties or who have designated pursuant to Article 1 (commencing at Section 6800) of Chapter 3 of Division 5 the names of the candidates for whom they pledged themselves to vote, shall not appear upon the ballot. In lieu thereof, the names of the candidates of their respective parties for President and Vice President of the United States shall be printed together in pairs upon the ballot under the title, "Presidential Electors." The Secretary of State shall arrange these pairs for the First Assembly District in the alphabetical order of the names of the candidates for President, and thereafter for each succeeding assembly district, the pair appearing first shall be placed last, the order of the other pairs remaining unchanged.

§ 10205. Voting square for presidential electors. At the right of the names of the candidates for President and Vice President of each party shall be printed their party name or political appellation. At the right of that party name or appellation there shall be a square of sufficient size for the stamping of a cross (+). Every cross (+) stamped within that square shall be counted as a vote for each candidate for presidential elector of that party.

§ 10229. Instructions to voters; presidential electors; party electors. In elections when electors of President and Vice President of the United States are to be chosen, there shall be placed upon the ballot, in addition to the instructions to voters as provided in this article, an instruction as follows: "To vote for all of the electors of a party, stamp a cross (+) in the square opposite the names of the presidential and vice presidential candidates of that party. A cross (+) stamped in the square opposite the name of a party and its presidential and vice presidential candidate, is a vote for all of the electors of that party, but for no other candidates." This instruction shall appear immediately before the words: "To vote for a person not on the ballot."

If a group of candidates for electors has been nominated under the provisions of Chapter 3 (commencing at Section 6800) of Division 5, and has under the provisions of Article 1 (commencing at Section 6800) of that chapter designated the names of the candidates for President and Vice President of the United States for whom those candidates have pledged themselves to vote, the instructions to voters shall also contain the following:

"To vote for those electors who have pledged themselves to vote for a candidate for President and Vice President not supported by any particular party stamp a cross (+) in the square opposite the names of those presidential and vice presidential candidates."

If a group of candidates for electors has been nominated by a party not qualified to participate in the election, the instructions to voters shall also contain the following:

"To vote for those electors who have pledged themselves to vote for a candidate for President and for Vice President of any party not qualified to participate in the election write in the names and party of those presidential and vice presidential candidates in the blank space provided for that purpose."

The names of presidential and vice presidential candidates and a list of presidential electors of nonqualified political parties shall be filed with the Secretary of State at least 60 days prior to the election.

§ 18753. Certified abstract of vote for presidential electors. As soon as the statement of the vote of his county at a presidential election is made out and entered on the records of the board of supervisors, the county clerk shall make a certified abstract of so much thereof as relates to the vote given for persons for electors of President and Vice President of the United States.

§ 18755. Presidential election returns; transmittal to secretary of state. The county clerk shall seal the abstract of votes for electors, indorse it "Presidential election returns," and by mail or express, without delay, transmit it to the Secretary of State.

§ 18758. Certification of election of electors. On the last Monday in the month of the election, or as soon as the returns have been received from all the counties in the State, if received before that time, the Secretary of State shall compare and estimate the votes given for electors, and certify to the Governor the names of the proper number of persons having the highest number of votes. The Secretary of State shall thereupon issue and transmit to each such elector a certificate of election. The certificate shall be accompanied by a notice of the time and place of the meeting of the electors and a statement that each elector will be entitled to a per diem allowance and mileage in the amounts specified in Section 25108.

§ 25102. Duties of governor. On or before the day of meeting of the electors, the Governor shall deliver to the electors a list of the names of electors, and he shall perform any other duties relating to presidential electors which are required of him by the laws of the United States.

§ 25104. Vacancies. In case of the death or absence of any elector chosen, or if the number of electors is deficient for any other reason, the electors then present shall elect, from the citizens of the State, as many persons as will supply the deficiency.

§ 25105. Vote for candidates. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State.

§ 25106. Ballots. The electors shall name in their ballots the person voted for as President, and in separate ballots the person voted for as Vice President.

§ 25107. Certification of vote. The electors shall make separate lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign, certify, seal, and transmit by mail to the seat of the Government of the United States, directed to the President of the Senate.

APPENDIX C

SAMPLE BALLOT:
1968 CALIFORNIA PRESIDENTIAL ELECTION

BALLOT CARD MUST BE INSERTED
INTO VOTOMATIC BEFORE VOTING

PUNCH OUT BALLOT CARD ONLY WITH
PUNCHING DEVICE ATTACHED TO
VOTOMATIC; NEVER WITH PEN OR PENCIL

INSTRUCTIONS TO VOTERS: To vote for all of the electors of a party, punch the ballot card in the hole opposite the names of the presidential and vice presidential candidates of that party. A hole punched in the ballot card opposite the name of a party and its presidential and vice presidential candidate, is a vote for all of the electors of that party but for no other candidates. To vote for those electors who have pledged themselves to vote for a candidate for President and for Vice President of any party not qualified to participate in the election, write the names and party of those presidential and vice presidential candidates in the blank space provided for that purpose on the write-in ballot envelope.

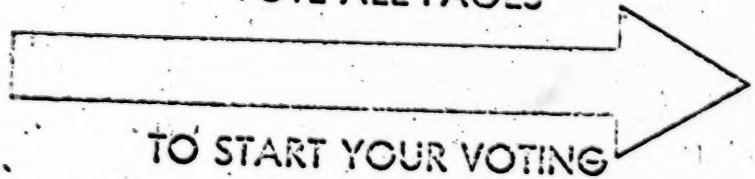
To vote for any other candidate of your selection, punch the ballot card in the hole next to the right of the name of that candidate. To vote for a person not on the ballot, write his name in the blank space provided for that purpose on the write-in ballot envelope.

To vote on any measure or proposition, punch the ballot card in the hole after the word "YES" (or its equivalent response) or after the word "NO" (or its equivalent response).

All marks except the punched hole are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly punch, tear or deface the ballot card, or tear or deface the write-in ballot envelope, return it to the inspector of election and obtain another.

After voting, remove
the ballot card from the Votomatic
and insert it into the ballot envelope.

VOTE ALL PAGES



TO START YOUR VOTING

GO TO NEXT PAGE

D

GENERAL BALLOT — TUESDAY, NOVEMBER 5, 1968
County of Santa Clara

PRESIDENTIAL ELECTORS Vote for One Party		
RICHARD M. NIXON, For President SPIRO T. AGNEW, For Vice President	Republican	2
GEORGE C. WALLACE, For President MARVIN GRIFFIN, For Vice President	American Independent	3
(No Eligible Candidate), For President PEGGY TERRY, For Vice President	Peace and Freedom	4
HUBERT H. HUMPHREY, For President EDMUND S. MUSKIE, For Vice President	Democratic	5

CONGRESSIONAL

UNITED STATES SENATOR Vote for One	ALAN CRANSTON, Democratic	11
	PAUL JACOBS, Peace and Freedom Writer	12
	MAX RAFFERTY, Republican State Superintendent of Public Instruction	13
REPRESENTATIVE IN CONGRESS 10th DISTRICT Vote for One	CHARLES S. GUBSER, Republican United States Congressman	15
	MARTIN L. PARNICK, Peace and Freedom College Professor	16
	GRAYSON S. TAKETA, Democratic Attorney At Law	17

BALLOT CONTINUED ON NEXT PAGE

APPENDIX D

FOOTNOTE TO ARTICLE IN TIME MAGAZINE FOR JANUARY 17, 1969, PAGE 18, CONCERNING UNFAITHFUL PRESIDENTIAL ELECTORS

The following is a footnote to a report which appeared in TIME MAGAZINE on January 17, 1969, at page 18. The reference to "Bailey" refers to Dr. Lloyd W. Bailey, a physician from Rocky Mount, North Carolina, who was elected as an elector from the State of North Carolina on the Republican ticket. Instead of casting his electoral ballot for Richard Nixon, Dr. Bailey cast his electoral ballot for George Wallace.

* Bailey is the sixth elector in U.S. history to defy his party. The others: Pennsylvanian Samuel Miles, chosen as a Federalist, voted for Thomas Jefferson rather than John Adams in 1796; former Senator William Plumer of New Hampshire voted for John Quincy Adams rather than James Monroe, 1820; Preston Parks of Tennessee voted for Strom Thurmond instead of Harry Truman, 1948; W. F. Turner of Alabama voted for a circuit judge instead of Adlai Stevenson, 1956; Henry D. Irwin of Oklahoma ignored his pledge to Nixon and voted for Virginia Senator Harry Byrd, 1960.

TIME, JANUARY 17, 1969

APPENDIX E

OFFICIAL ELECTION RETURNS

Presidential vote

Complete official totals on election

WASHINGTON (AP) — President - elect Nixon received 499,704 more popular votes than Hubert H. Humphrey in the Nov. 5 presidential election, complete official totals showed Wednesday.

Nixon received 31,770,237 votes, Humphrey had 31,270,533 and third-party nominee George C. Wallace had 9,897,141. An assortment of other candidates received 229,910 votes.

Nixon got 43.40 per cent of the vote, Humphrey got 42.72 per cent and Wallace 13.53.

A record total of 73,177,821 votes were cast, compared with 70,913,673 votes cast in the 1964 presidential election. But it represented only 60.2 per cent of the estimated 121.5 million Americans of voting age.

The official totals from all 50 states and the District of Columbia did not change the electoral vote totals, which show Nixon 302, Humphrey 191, Wallace 45.

The electors meet in their respective state capitals next Monday to cast their votes, which will be counted officially by a joint session of Congress on Jan. 6.

Besides the three major candidates, the official canvasses showed these totals for other candidates:

E. Harold Munn Sr., Prohibition party, 14,519; Eldridge Cleaver, Peace and Freedom party, 36,385, most of them from California; Henning Blomen, Socialist-Labor party, 52,588; Fred Halstead, Socialist Worker party, 41,300; Sen. Eugene J. McCarthy, D-Minn., 25,938, mostly from California; Dick Gregory, New party, 47,097, more than half in New York; and Charlene Mitchell, Communist and Free Ballot parties, 1,075.

In addition, 1,480 votes were cast for the antiwar New party in three states where no presidential candidates were listed and 19,607 votes were cast for an assortment of other candidates, including New York Gov. Nelson A. Rockefeller and comedian Pat Paulsen.

California, which has 40 electoral votes, gave Nixon 3,467,644 votes, Humphrey 3,244,318, and Wallace 487,270.

Official 1964 Presidential Election Results

STATE	TOTAL POPULAR VOTE			PERCENTAGES†	
	JOHNSON	GOLDWATER	OTHER PARTIES	JOHNSON	GOLDWATER
ALABAMA		479,085	210,733		69.5
ALASKA	44,329	22,930	None	65.9	34.1
ARIZONA	237,753	242,535	482	49.5	50.4
ARKANSAS	314,197	243,264	2,965	56.1	43.4
CALIFORNIA	4,171,877	2,879,108	6,601	59.1	40.8
COLORADO	476,024	296,767	4,195	61.3	38.2
CONNECTICUT	826,269	390,996	1,313	67.8	32.1
DELAWARE	122,704	78,078	538	60.9	38.8
FLORIDA	948,540	905,941	None	51.1	48.9
GEORGIA	522,556	616,584	195	45.9	54.1
HAWAII	163,249	44,022	None	78.8	21.2
IDAHO	148,920	143,557	None	50.9	49.1
ILLINOIS	2,796,833	1,905,946	62	59.5	40.5
INDIANA	1,170,848	911,118	9,640	56.0	43.6
IOWA	733,030	449,148	2,361	61.9	37.9
KANSAS	464,028	386,579	7,294	54.1	45.1
KENTUCKY	669,659	372,977	3,469	64.0	35.7
LOUISIANA	387,068	509,225	None	43.2	56.8
MAINE	262,264	118,701	None	68.8	31.2
MARYLAND	730,912	385,495	50	65.5	34.5
MASSACHUSETTS	1,786,422	549,727	8,649	76.2	23.4
MICHIGAN	2,136,615	1,060,152	6,335	66.7	33.1
MINNESOTA	991,117	559,624	3,721	63.8	36.0
MISSISSIPPI	52,618	356,528	None	12.9	87.1
MISSOURI	1,164,344	653,535	None	64.0	36.0
MONTANA	164,246	113,032	1,350	58.9	40.6
NEBRASKA	307,307	276,847	None	52.6	47.4
NEVADA	79,339	56,094	None	58.6	41.4
NEW HAMPSHIRE	184,064	104,029	None	63.9	36.1
NEW JERSEY	1,868,231	964,174	15,258	65.6	33.9
NEW MEXICO	194,015	132,838	1,792	59.0	40.4
NEW YORK	4,913,102	2,243,559	9,614	68.6	31.3
NORTH CAROLINA	800,139	624,844	None	56.2	43.8
NORTH DAKOTA	149,784	108,207	398	58.0	41.9
OHIO	2,498,331	1,470,865	None	62.9	37.1
OKLAHOMA	519,834	412,665	None	55.7	44.3
OREGON	501,017	282,779	2,509	63.7	36.0
PENNSYLVANIA	3,130,954	1,673,657	18,079	64.9	34.7
RHODE ISLAND	315,463	74,615	13	80.9	19.1
SOUTH CAROLINA	215,723	309,048	8	41.1	58.9
SOUTH DAKOTA	163,010	130,108	None	55.6	44.4
TENNESSEE	635,047	508,965	34	55.5	44.5
TEXAS	1,663,185	958,566	5,060	63.3	36.5
UTAH	219,628	181,785	None	54.7	45.3
VERMONT	108,127	54,942	20	66.3	33.7
VIRGINIA	558,038	481,334	2,895	53.5	46.2
WASHINGTON	779,699	470,366	8,309	62.0	37.4
WEST VIRGINIA	538,087	253,953	None	67.9	32.1
WISCONSIN	1,050,424	638,495	2,896	62.1	37.7
WYOMING	80,718	61,998	None	56.6	43.4
DIST. OF COLUMBIA	189,796	28,801	None	85.5	14.5
TOTAL	43,129,484	27,178,188	336,838	61.1	38.5

1960

	KENNEDY	%	NIXON	%	UNPLEDGED	%	PLURALITY
Ala.	318,303*		237,981		324,050*		D 80,322*
Alaska	29,809	49.1	30,953	50.9			R 1,144
Ariz.	176,781	44.4	221,241	55.5			R 44,460
Ark.	215,049	50.2	184,508	43.1	28,952	6.8	D 30,541
Calif.	3,224,099	49.6	3,259,722	50.1			R 35,623
Colo.	330,629	44.9	402,242	54.6			R 71,613
Conn.	657,055	53.7	565,813	46.3			D 91,242
Del.	99,590	50.6	96,373	49.0			D 3,217
Fla.	748,700	48.5	795,476	51.5			R 46,776
Ga.	458,638	62.6	274,472	37.4			D 184,166
Hawaii	92,410	50.0	92,295	50.0			D 115
Idaho	138,853	46.2	161,597	53.8			R 22,744
Ill.	2,377,846	50.0	2,368,988	49.8			D 8,858
Ind.	952,358	44.6	1,175,120	55.0			R 222,762
Iowa	550,565	43.2	722,381	56.7			R 171,816
Kan.	363,213	39.1	561,474	60.4			R 198,261
Ky.	521,855	46.4	602,607	53.6			R 80,752
La.	407,339	50.4	230,980	28.6	169,572	21.0	D 176,359
Maine	181,159	43.0	240,608	57.0			R 59,449
Md.	565,808	53.6	489,538	46.4			D 76,270
Mass.	1,487,174	60.2	976,750	39.6			D 510,424
Mich.	1,687,269	50.9	1,620,428	48.8			D 66,841
Minn.	779,933	50.6	757,915	49.2			D 22,018
Miss.	108,362	36.3	73,561	24.7	116,248	39.0	U 7,886
Mo.	972,201	50.3	962,221	49.7			D 9,980
Mont.	134,891	48.6	141,841	51.1			R 6,950
Neb.	232,542	37.9	380,553	62.1			R 148,011
Nev.	54,880	51.2	52,387	48.8			D 2,493
N. H.	137,772	46.6	157,989	53.4			R 20,217
N. J.	1,385,415	50.0	1,363,324	49.2			D 22,091
N. M.	156,027	50.2	153,733	49.4			D 2,294
N. Y.	3,830,085	52.5	3,446,419	47.3			D 383,666
N. C.	713,136	52.1	655,420	47.9			D 57,716
N. D.	123,963	44.5	154,310	55.4			R 30,347
Ohio	1,944,248	46.7	2,217,611	53.3			R 273,363
Okla.	370,111	41.0	533,039	59.0			R 162,928
Ore.	367,402	47.4	408,060	52.6			R 40,658
Pa.	2,556,282	51.1	2,439,956	48.7			D 116,326
R. I.	258,032	63.6	147,502	36.4			D 110,530
S. C.	198,129	51.2	188,558	48.8			D 9,571
S. D.	128,070	41.8	178,417	58.2			R 50,347
Tenn.	481,453	45.8	556,577	52.9			R 75,124
Texas	1,167,567	50.5	1,121,310	48.5			D 46,257
Utah	169,248	45.2	205,361	54.8			R 36,113
Vt.	69,186	41.4	98,131	58.6			R 28,945
Va.	362,327	47.0	404,521	52.4			R 42,194
Wash.	599,298	48.3	629,273	50.7			R 29,975
W. Va.	441,786	52.7	395,995	47.3			D 45,791
Wis.	830,805	48.0	895,175	51.8			R 64,370
Wyo.	63,331	45.0	77,451	55.0			R 14,120
NATIONAL TOTALS							
Popular Votes	34,220,984*	49.5*	34,108,157	49.3	638,822*	.92*	D 112,827*

1956

	EISENHOWER	%	STEVENSON	%	PLURALITY
Ala.	195,694	39.4	280,844	56.5	D 85,150
Alaska	Territory of Alaska did not vote for President in 1956				
Ariz.	176,990	61.0	112,880	38.9	R 64,110
Ark.	186,287	45.8	213,277	52.5	D 26,990
Calif.	3,027,668	55.4	2,420,135	44.3	R 607,533
Colo.	394,479	60.0	257,997	39.3	R 136,482
Conn.	711,837	63.7	405,079	36.3	R 306,758
Del.	98,057	55.1	79,421	44.6	R 18,636
Fla.	643,849	57.2	480,371	42.7	R 163,478
Ga.	222,778	33.3	444,688	66.4	D 221,910
Hawaii	Territory of Hawaii did not vote for President in 1956				
Idaho	166,979	61.2	105,868	38.8	R 61,111
Ill.	2,623,327	59.5	1,775,682	40.3	R 847,645
Ind.	1,182,811	59.9	783,908	39.7	R 398,903
Iowa	729,187	59.1	501,858	40.7	R 227,329
Kan.	566,878	65.4	296,317	34.2	R 270,561
Ky.	572,192	54.3	476,453	45.2	R 95,739
La.	329,047	53.3	243,977	39.5	R 85,070
Maine	249,238	70.9	102,468	29.1	R 146,770
Md.	559,738	60.0	372,613	39.9	R 187,125
Mass.	1,393,197	59.3	948,190	40.4	R 445,007
Mich.	1,713,647	55.6	1,359,898	44.1	R 353,749
Minn.	719,302	53.7	617,525	46.1	R 101,777
Miss.	60,685	24.5	144,453	58.2	D 83,768
Mo.	914,289	49.9	918,273	50.1	D 3,984
Mont.	154,933	57.1	116,238	42.9	R 38,695
Neb.	378,108	65.5	199,029	34.5	R 179,079
Nev.	56,049	58.0	40,640	42.0	R 15,409
N. H.	176,519	66.1	90,364	33.8	R 86,155
N. J.	1,606,942	64.7	850,337	34.2	R 756,605
N. M.	146,788	57.8	106,098	41.8	R 40,690
N. Y.	4,345,506	61.2	2,747,944	38.7	R 1,597,562
N. C.	575,062	49.3	590,530	50.7	D 15,468
N. D.	156,766	61.7	96,742	38.1	R 60,024
Ohio	2,262,610	61.1	1,439,655	38.9	R 822,955
Okla.	473,769	55.1	385,581	44.9	R 88,188
Ore.	406,393	55.2	329,204	44.7	R 77,189
Pa.	2,585,252	56.5	1,981,769	43.3	R 603,483
R. I.	225,819	58.3	161,790	41.7	R 64,029
S. C.	75,700	25.2	136,372	45.4	D 60,672
S. D.	171,569	58.4	122,288	41.6	R 49,281
Tenn.	462,288	49.2	456,507	48.6	R 5,781
Texas	1,080,619	55.3	859,958	44.0	R 220,661
Utah	215,631	64.6	118,364	35.4	R 97,267
Vt.	110,390	72.2	42,549	27.8	R 67,841
Va.	386,459	55.4	267,760	38.4	R 118,699
Wash.	620,430	53.9	523,002	45.4	R 97,428
W. Va.	449,297	54.1	381,534	45.9	R 67,763
Wis.	954,844	61.6	586,768	37.8	R 368,076
Wyo.	74,573	60.1	49,554	39.9	R 25,019
NATIONAL TOTALS					
Popular Votes	35,590,472	57.4	26,022,752	42.0	R 9,567,720

1952

	EISENHOWER	%	STEVENSON	%	PLURALITY
Ala.	149,231	35.0	275,075	64.6	D 125,844
Alaska	Territory of Alaska did not vote for President in 1952				
Ariz.	152,042	58.3	108,528	41.7	R 43,514
Ark.	177,155	43.8	226,300	55.9	D 49,145
Calif.	2,897,310	56.3	2,197,548	42.7	R 699,762
Colo.	379,782	60.3	245,504	39.0	R 134,278
Conn.	611,012	55.7	481,649	43.9	R 129,363
Del.	90,059	51.8	83,315	47.9	R 6,744
Fla.	544,036	55.0	444,950	45.0	R 99,086
Ga.	198,961	30.3	456,823	69.7	D 257,862
Hawaii	Territory of Hawaii did not vote for President in 1952				
Idaho	180,707	65.4	95,081	34.4	R 85,626
Ill.	2,457,327	54.8	2,013,920	44.9	R 443,407
Ind.	1,136,259	58.1	801,530	41.0	R 334,729
Iowa	808,906	63.8	451,513	35.6	R 357,393
Kan.	616,302	68.8	273,296	30.5	R 343,006
Ky.	495,029	49.8	495,729	49.9	D 700
La.	306,925	47.1	345,027	52.9	D 38,102
Maine	232,353	66.0	118,806	33.8	R 113,547
Md.	499,424	55.4	395,337	43.8	R 104,087
Mass.	1,292,325	54.2	1,083,525	45.5	R 208,800
Mich.	1,551,529	55.4	1,230,657	44.0	R 320,872
Minn.	763,211	55.3	608,458	44.1	R 154,753
Miss.	112,966	39.6	172,566	60.4	D 59,600
Mo.	959,429	50.7	929,830	49.1	R 29,599
Mont.	157,394	59.4	106,213	40.1	R 51,181
Neb.	421,603	69.2	188,057	30.8	R 233,546
Nev.	50,502	61.4	31,688	38.6	R 18,814
N. H.	166,287	60.9	106,663	39.1	R 59,624
N. J.	1,373,613	56.8	1,015,902	42.0	R 357,711
N. M.	132,170	55.4	105,661	44.3	R 26,509
N. Y.	3,952,813	55.5	3,104,601	43.6	R 848,212
N. C.	558,107	46.1	652,803	53.9	D 94,696
N. D.	191,712	71.0	76,694	28.4	R 115,018
Ohio	2,100,391	56.8	1,600,367	43.2	R 500,024
Okla.	518,045	54.6	430,939	45.4	R 87,106
Ore.	420,815	60.5	270,579	38.9	R 150,236
Pa.	2,415,789	52.7	2,146,269	46.9	R 269,520
R. I.	210,935	50.9	203,293	49.0	R 7,642
S. C.	168,082	49.3	173,004	50.7	D 4,922
S. D.	203,857	69.3	90,426	30.7	R 113,431
Tenn.	446,147	50.0	443,710	49.7	R 2,437
Texas	1,102,878	53.1	969,228	46.7	R 133,650
Utah	194,190	58.9	135,364	41.1	R 58,826
Vt.	109,717	71.5	43,355	28.2	R 66,362
Va.	349,037	56.3	268,667	43.4	R 80,360
Wash.	599,107	54.3	492,845	44.7	R 106,262
W. Va.	419,970	48.1	453,578	51.9	D 33,608
Wis.	979,744	61.0	622,175	38.7	R 357,569
Wyo.	81,049	62.7	47,934	37.1	R 33,115
NATIONAL TOTALS					
Popular Votes	33,936,234	55.1	27,314,992	44.4	R 6,621,242

1948

	TRUMAN	%	DEWEY	%	THURMOND (States Rights)	%	PLURALITY
Ala.			40,930	19.0	171,443	79.7	SR 130,513
Alaska	Territory of Alaska did not vote for President in 1948						
Ariz.	95,251	53.8	77,597	43.8			D 17,654
Ark.	149,659	61.7	50,959	21.0	40,068	16.5	D 98,700
Calif.	1,913,134	47.6	1,895,269	47.1	1,228		D 17,865
Colo.	267,288	51.9	239,714	46.5			D 27,574
Conn.	423,297	47.9	437,754	49.5			R 14,457
Del.	67,813	48.8	69,588	50.0			R 1,775
Fla.	281,988	43.8	194,280	33.6	89,755	15.5	D 87,708
Ga.	254,646	60.8	76,691	18.3	85,055	20.3	D 169,591
Hawaii	Territory of Hawaii did not vote for President in 1948						
Idaho	107,370	50.0	101,514	47.3			D 5,856
Ill.	1,994,715	50.1	1,961,103	49.2			D 33,612
Ind.	807,831	48.8	821,079	49.6			R 13,248
Iowa	522,380	50.3	494,018	47.6			D 28,362
Kan.	351,902	44.6	423,039	53.6			R 71,137
Ky.	466,756	56.7	341,210	41.5	10,411	1.3	D 125,546
La.	136,344	32.7	72,657	17.5	204,290	49.1	SR 67,946
Maine	111,916	42.3	150,234	56.7			R 38,318
Md.	286,521	48.0	294,814	49.4	2,476	0.4	R 8,293
Mass.	1,151,788	54.7	909,370	43.2			D 242,418
Mich.	1,003,448	47.6	1,038,595	49.2			R 35,147
Minn.	692,966	57.2	483,617	39.9			D 209,349
Miss.	19,384	10.1	5,043	2.6	167,538	87.2	SR 148,154
Mo.	917,315	58.1	655,039	41.5	42		D 262,276
Mont.	119,071	53.1	96,770	43.1			D 22,301
Neb.	224,165	45.8	264,774	54.2			R 40,609
Nev.	31,291	50.4	29,357	47.3			D 1,934
N. H.	107,995	46.7	121,299	52.4	7		R 13,304
N. J.	895,455	45.9	981,124	50.3			R 85,669
N. M.	105,464	56.4	80,303	43.0			D 25,161
N. Y.	2,780,204	45.0	2,841,163	46.0			R 60,959
N. C.	459,070	58.0	258,572	32.7	69,652	8.8	D 200,498
N. D.	95,812	43.4	115,139	52.2	374	0.2	R 19,327
Ohio	1,452,791	49.5	1,445,684	49.2			D 7,107
Okla.	452,782	62.7	268,817	37.3			D 183,965
Ore.	243,147	46.4	260,904	49.8			R 17,757
Pa.	1,752,426	46.9	1,902,197	50.9			R 149,771
R. I.	188,736	57.6	135,787	41.4			D 52,949
S. C.	34,423	24.1	5,386	3.8	102,607	72.0	SR 68,184
S. D.	117,653	47.0	129,651	51.8			R 11,998
Tenn.	270,402	49.1	202,914	36.9	73,815	13.4	D 67,488
Texas	824,235	66.0	303,467	24.3	113,920	9.7	D 520,768
Utah	149,151	54.0	124,402	45.0			D 24,749
Vt.	45,557	36.9	75,926	61.5			R 30,369
Va.	200,786	47.9	172,070	41.0	43,393	10.4	D 28,716
Wash.	476,165	52.6	386,315	42.7			D 89,850
W. Va.	429,188	57.3	316,251	42.2			D 112,937
Wis.	647,310	50.7	590,959	46.3			D 56,351
Wyo.	52,354	51.6	47,947	47.3			D 4,407
NATIONAL TOTALS							
Popular Votes	24,179,345	49.6	21,991,291	45.1	1,176,125	2.4	D 2,188,054

APPENDIX F

(i) ARTICLE APPEARING IN TIME MAGAZINE FOR JANUARY 17, 1969, PAGE 18

(ii) ARTICLE FROM THE SATURDAY REVIEW FOR NOVEMBER 23, 1968, PAGE 42

THE ELECTORAL COLLEGE

Reminder for Reform

They could scarcely have known it at the time, but 48,245 North Carolinians who voted for the Republican ticket on Nov. 5 wound up casting their ballots for George Wallace instead. This switch was decided for them by Dr. Lloyd W. Bailey, a physician from Rocky Mount and one of 13 electors chosen by the state's voters to reflect their choice. By tradition, all the electoral votes should have gone automatically to Richard Nixon as winner of a plurality of the state's popular vote. Rather than ratify the Republican victory, however, Bailey, a loyal John Bircher, handed over one-thirteenth of the total votes to Wallace, because, as he put it: "Nixon has already clearly shown to us that we are going to have more of the same."*

Refusing to dismiss Bailey's act as a symbolic nose-thumbing by a disgruntled right-winger, two Democrats last week challenged the wayward Republican's vote. Maine's Senator Edmund Muskie, the defeated vice-presidential nominee, and Michigan Representative James O'Hara invoked an 1887 statute under which a majority of both houses may reject any vote by an elector that has not been "regularly given." The motion was soundly defeated, but the two Democrats believe that they have made a point. Said Muskie: "I hope that the consequences of Congress' action are understood by all Americans—and by Congress itself."

The reason for their unusual act was not, of course, to gain another superfluous electoral vote for Richard Nixon. In the last election, the fear was that George Wallace would deprive both the other candidates of an electoral majority, leaving him free to decide a winner by bargaining with his votes. By challenging Bailey's vote, O'Hara and Muskie hoped, in the latter's words, to "underscore the necessity for a complete reform of the system by constitutional amendment."

For Abolition. Millions of U.S. voters are disfranchised every four years by the college's winner-take-all system, and they are plainly eager for a change. A Louis Harris poll showed 79% of Americans in favor of abolishing the college and providing for direct election of the President; Gallup found 81% in favor of direct elections.

Ten reform resolutions have been introduced since the 91st Congress convened. One, by Louisiana Democrat Hale Boggs, which retains the state electoral votes but disbands the college itself, provides for automatic election of any candidate receiving 40% of the electoral vote. If none gets that percentage, there would be a runoff election between the two leading candidates. A more realistic approach to the problem is offered in the Senate by Indiana Democrat Birch Bayh, who says there is "no more pressing business facing the nation," is pushing for the total abolition of the Electoral College system. Presidential elections would be decided by popular vote only. Whether any of the resolutions succeeds or not depends on the support of Richard Nixon. Predicts Senate Judiciary Chairman James O. Eastland: "If the next President pushes electoral reform, we'll get it."

* Bailey is the sixth elector in U.S. history to defy his party. The others: Pennsylvanian Samuel Miles, chosen as a Federalist, voted for Thomas Jefferson rather than John Adams in 1796; former Senator William Plumer of New Hampshire voted for John Quincy Adams rather than James Monroe, 1820; Preston Parks of Tennessee voted for Strom Thurmond instead of Harry Truman, 1948; W. F. Turner of Alabama voted for a circuit judge instead of Adlai Stevenson, 1956; Henry D. Irwin of Oklahoma ignored his pledge to Nixon and voted for Virginia Senator Harry Byrd, 1960.

TIME, JANUARY 17, 1969

FROM THE NEW YORK TIMES, November 23, 1968

Farewell to the Electoral College

FRAMERS of the Constitution envisioned the Electoral College as a sort of elite gathering in which persons of the highest caliber would participate. These electors, the Constitutional Convention believed, would meet soon after the November vote to discuss and evaluate the merits of various candidates for President. Each elector would vote for two persons for President, and the man with the highest number of electoral votes would become President and the runner-up Vice President. In casting their ballots, the electors were expected to reflect the views of the people as expressed in the quadrennial vote, but they would not be bound by that vote. In other words, the office of President was too precious, too elevated, to be left to the whim of the common man, though he could express his preferences.

The design of the framers of the Constitution was never really carried out. No one needed to deliberate over the choice for President when George Washington was the candidate, and by 1800, the nation had an incipient political party system which had not been foreseen or even contemplated. With political parties came the end of the idea of an independent elector chosen among the elite. The pledged elector, instructed to vote for a certain party candidate, reflected a publicly announced slate of names bound to vote a certain way in the Electoral College. The independent role of the several states grew with each election, and any idea of a President elected by a democratic majority of the total vote of the American people gradually faded into the complex and unworkable Electoral College system we are now saddled with—unworkable and explosively dangerous.

LAST month, the *Fordham Law Review* published a thoroughgoing study of the Electoral College—and why it should be abolished—a study so sharply expressed and logically presented that it bears quotation here. The critique points out that while the United States has been lucky in the caliber of its Presidents and fortunate to have avoided a Constitutional crisis because of the dangers and defects of the Electoral College, experience dictates immediate attention to the matter before it spells chaos and disaster. There is little doubt in any rational mind by now, especially after November 5, that the Electoral College poses a serious threat to the stability of our Presidential system.

To win the Presidency a man needs only a majority of electoral, not popular, votes. Such a majority is quite possible without a plurality of the total popular vote. Indeed, on fifteen occasions we have elected a President who did not have a plurality. In three Presidential elections we denied the White House to a man who had actually drawn more than half the popular vote. In 1876, Governor Samuel J. Tilden of New York, for example, polled 250,000 more votes than Rutherford B. Hayes or 51 percent of a total vote of just over 8,000,000, but the Republican became President through the idiotic mathematics of the Electoral College system coupled with post-Civil

War political chicanery. In 1824, Andrew Jackson polled 153,000 votes to 105,000 for John Quincy Adams, but when Jackson did not have the required majority in the Electoral College, the election went to the House of Representatives, and after corrupt bargaining Adams was picked for President over a candidate who had polled half again as many popular votes.

As the Fordham survey says, it is in fact possible for a candidate to win a majority of the electoral votes with considerably less than one-fourth of the total popular vote. "If a candidate were to win a plurality of the popular votes in eleven large states plus one other state," it adds, "he would have a majority of the electoral votes even if he received no popular votes in the remaining thirty-eight states. This is an extreme example but it serves to underscore the anomaly."

The matter of disproportion spills over into the states, moreover, due to the fact that each state is entitled to at least three electoral votes. That means there is one electoral vote for every 75,000 voters in Alaska, one for every 260,000 votes in Arizona, one for every 330,000 votes in Virginia, and one for every 400,000 in California. But the advantage of living in a tiny state doesn't last long when one realizes that a voter in Alaska, Nevada, Delaware, Vermont, or Wyoming can influence only three electoral votes while a single voter in New York can influence the distribution of forty-three electoral votes. Nothing, indeed, makes much sense about the Electoral College any way you look at it, but worst of all, it is not truly democratic.

Resentment, unrest, public clamor for reform of the Electoral College would surely have followed the crisis we barely avoided after November 5. As television shrinks the country and draws each state nearer every other state in common problems, reactions, and solutions, something as antique as the Electoral College is simply a form of political Russian roulette, dangerous and potentially disastrous to our nation. On the other hand, if we are to go to a straight popular vote for President and Vice President we shall need federal safeguards to watch local balloting more closely. There are those who will never be convinced that Mayor Daley's Chicago vote which gave Kennedy the election over Nixon in 1960 by just over 8,000 votes was a legitimate count, and something along these lines seemed in prospect in Illinois for a while even this November. But with careful federal surveillance there is no logical reason why the Presidential election of 1972 should not be left to the total popular vote of the American people. We should not have to depend upon tricky and antiquated procedures in electing a man to the most powerful office in the world. —R.L.T.

APPENDIX G

(i) NEWSPAPER ARTICLE BY TOM WICKER OF THE NEW YORK TIMES

(ii) REPORT IN THE WALL STREET JOURNAL FOR JANUARY 24, 1969

(iii) NEWS REPORT FROM THE PALO ALTO TIMES FOR MAY 27, 1969

LACK OF AGREEMENT

Election Reform May Bog Down

By TOM WICKER
The New York Times

After the fears aroused by the 1968 election, the time seemed as ripe as it would ever be for fundamental reform of the way in which we elect presidents. But the time is never really ripe for fundamental reform, and the election effort is in danger of bogging down, for two predictable reasons.

One is that while most members of Congress and officials are for doing something, not enough are agreed on what it ought to be. The Senate Subcommittee on Constitutional Amendments, for example, now lines up about as follows:

Senators Bayh of Indiana and Tydings of Maryland for direct popular election; Senators Ervin of North Carolina and Dodd of Connecticut for proportional division of a state's electoral votes according to its popular votes; Sen. Hruska of Nebraska for assigning an electoral vote to each congressional district; Senators Fong of Hawaii and Thurmond of South Carolina for either the proportional or the district plan; Senators Eastland of Mississippi and Dirksen of Illinois, fluid.

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MISCONCEPTIONS — The other major problem is the ironic misconceptions many politicians hold, almost as articles of faith, about direct popular election — which happens to be the only reform plan that has great public support (79 per cent in the latest Harris Poll on the subject) and that would eliminate all, not just some, of the dangers of the Electoral College system.

These misconceptions, nevertheless, have produced an opposition to the direct voting plan that rests largely on two directly contradictory propositions, neither of which is true — that direct popular voting would damage the interests of the small states, or else that it would damage the interests of the large states. (Neither small nor large states, of course, have any necessary similarity of interests, not even rural or urban; Texas and Michigan are large states with substantial rural interests; Rhode Island and Connecticut are small but urban states.)

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IMMATERIAL — The small-state argument holds no water at all. It is based on the fact that the automatic assignment of at least two electoral votes to every state gives greater proportional representation in the Electoral College to the voters of sparsely populated states. Alaska, for instance, gets one electoral vote for only 75,459 persons, while California gets one for 392,930 persons. This looks good on paper; but in politics Alaska's

"advantage" is worth less than Wally Hickel's standing with the Sierra Club. California still casts 50 electoral votes to Alaska's three, and anyone who doesn't understand what that means need only count how many presidential candidates visited Nome or Fairbanks last year.

In fact, the 12 largest states, in the Electoral College could choose a President with 281 votes, no matter what the other 38 states did. And the power of Alaskans and other small-state residents in a presidential election would be substantially enhanced, not reduced, by direct popular voting. That is because, under the system in which a state popular vote winner takes all of that state's electoral votes, the ballots of those who supported the loser are completely negated; in popular voting, they would be counted equally with the votes of every other voter in every other state.

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POPULATION—This does not mean, however, that the people of the big states would be damaged by popular voting — although it is true that the ability of those states to dominate the Electoral College (which they have in fact seldom done: witness 1968) would be reduced. These states would remain the major population centers, and presidential candidates would continue, in Barry Goldwater's phrase, to "hunt ducks where the ducks are." Does anyone imagine that New York and California would not remain the prime hunting grounds of presidential candidates? Or that candidates and Presidents would not conduct themselves generally in such a manner as to appeal to urban voters?

While urban-based minority groups might lose some of their power over big blocs of electoral votes, is there any longer a justification for that advantage now that the one-man, one-vote rulings are putting an end to rural-dominated state legislatures? All minority-group votes would be counted, moreover, under the direct election plan; those of blacks who voted for Hubert Humphrey in Illinois, for example, were negated when Richard Nixon took all that state's electoral votes in 1968.

Neither the small states nor the large states, in short, would suffer from direct voting. The people of one would only become as important as the people of the other — no more and no less.

WALL STREET JOURNAL
Friday, January 24, 1969

ELECTORAL REFORM grows more doubtful, despite discontent with the present setup. Congressional reformers seem unable to agree on an alternative to the electoral college. Democratic Sen. Bayh of Indiana, others backing a simple popular vote, suffer a fresh setback: Defection of Sen. Dirksen. He fears a popular-vote tally might not show a clear winner in a close election. Dirksen is the Republican of Bayh's subcommittee holding hearings on electoral reform.

Direct popular election still commands the biggest bloc of support in the Senate. Backing for other plans is more fragmented. But North Carolina's Ervin argues that the states wouldn't approve the popular vote even if Congress would. Bayh and allies aim to file more briefs tonight. He's making more outside Washington speech after the cruise.

There'll be no request for an early Nixon stand, for fear the Administration might back a plan other than the popular vote.

WASHINGTON (AP) — Doubts about scrapping the presidential election system have been clouded by a round of voting in the Senate Judiciary subcommittee.

The votes showed the subcommittee sharply divided over ways to change the present system—a situation existing in both chambers of Congress.

In the end the subcommittee agreed 9-0 Monday to send on to the full Judiciary Committee—without recommendation a plan under which each state would elect two presidential electors at large and the rest by districts.

But this was only after the subcommittee had lined up 6-3 in favor of the district plan and had rejected 5-3 a proposal for dividing each state's electoral vote in proportion to the popular vote of each presidential candidate.

Sen. Birch Bayh, D-Ind., the subcommittee chairman, was unable to bring to a vote the constitutional amendment he is backing to provide for direct popular election of the president and vice president.

The House Judiciary Committee on April 29 approved the popular vote plan by a 28-6 vote, but full House action has not been scheduled.